Filed 4/7/09 In re A.A. CA2/5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re A.A. et al., Persons Coming Under the Juvenile Court Law.	B210619 (Los Angeles County Super. Ct. No. CK61308)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. D.J. et al., Defendants and Appellants.	

APPEAL from orders of the Superior Court of Los Angeles County. Jacqueline Lewis, Commissioner. Affirmed.

Lori Siegel, under appointment by the Court of Appeal, for Defendant and Appellant D.J.

Judy Weissberg-Ortiz, under appointment by the Court of Appeal, for Defendant and Appellant S.A.

Raymond G. Fortner, Jr., County Counsel, James M. Owens and O. Raquel Ramirez, Deputy County Counsel, for Plaintiff and Respondent.

S.A. appeals from the order terminating her parental rights to her son A. and her daughter G. D.J. (who is G.'s father, but not A.'s) appeals from the order terminating his parental rights to G. On both appeals, we affirm.

Facts

This case began in October 2005, when DCFS received a telephone call reporting that 17-year-old S.A. was neglecting 17-month-old A. (G. was born during A.'s dependency, in September 2006.) Rights were not terminated until September 2008. We summarize the progress of the dependency during that nearly three year period.

2005

When DCFS received the October 2005 phone call, a social worker went to S.A.'s father's home, where S.A. and A. were living. S.A.'s father, R.A., said that S.A. had left the house during the late hours of the night without telling him, leaving A. asleep. R.A. also said that S.A. had been using drugs since her early teens. (Other family members later said the same thing.) She had been attending a drug program, but had stopped in August. R.A., not S.A., had been caring for A. R.A. wanted DCFS to intervene.

A. was detained and placed with R.A. DCFS filed a section 300 petition. In the month following the detention, S.A. was in intermittent touch with DCFS and with R.A., and seems to have visited A. only once. R.A. told DCFS that S.A. had a boyfriend, D.J., who R.A. said was a gang member.

In December 2005 S.A. pled no contest to the petition. It was sustained under subdivision (b), on factual allegations concerning her history of substance abuse. Reunification services were ordered; drug rehabilitation with testing, parenting education, and counseling.

2006

S.A. complied with her case plan in 2006. She enrolled in a drug program in March and completed the program in December, after a long period of consistent, negative drug tests. In June, she completed her parenting class.

She lived with her father for part of 2006, but in May, after her father remarried, moved into her mother's house. Her visits with A. were consistent. Visits were liberalized to unmonitored visits, and in August to weekend visits during which S.A. was A.'s primary caretaker. In May, the social worker reported that S.A. had appropriate parenting skills, a good support system, and good parent and child bonding. She was working toward her GED.

The social worker also reported that A. was doing well in R.A.'s home. A.'s great-grandparents, A.C. and R.C., provided daycare, so that A. spent his days at their house. (A.C. and R.C. eventually became A. and G.'s potential adoptive parents.) When G. was born, in September, DCFS instituted a Voluntary Family Maintenance plan. Both S.A. and D.J. agreed to drug test and participate in family preservation services, including a parenting class for D.J.

DCFS later learned that D.J. had been a dependent of the court, and had been in "numerous placements including foster homes and group homes." He had a criminal record.

At the end of 2006, the social worker wrote that S.A. had demonstrated that she was capable of providing care for her two children. A. was returned to her custody on December 29, and family preservation services were ordered.

2007

Things did not go well in 2007. During an unannounced home visit in March, both parents were observed to be affectionate and appropriate with the children, but family preservation services were terminated that month, after S.A. missed several appointments, then said that she did not want services. Both parents seem to have reverted to drug use. Both missed many drug tests.

D.J., who seems to have been incarcerated twice during the year, for a total of about six months, never enrolled in parenting classes.

On April 30, S.A. was arrested for driving under the influence of a controlled substance and possession of a controlled substance. D.J. was in the car when S.A. was arrested. S.A. and D.J. were by then living with D.J.'s mother, G.J., who told DCFS that

the parents went out every night and spent time with known drug users. S.A. and D.J. seemed to have moved out of G.J.'s home by May, and it is not clear where they were living after that time.

As the result of the April arrest, DCFS detained the children and filed a section 300 petition as to G. and a section 387 petition as to A., with factual allegations about S.A.'s and D.J.'s history of drug use and current use of drugs, the failure of family maintenance services, and S.A.'s April 30 arrest.

Both parents were arrested again on June 6, on charges of possession of a controlled substance and receiving stolen property. D.J. was also charged with possession of burglary tools.

On June 27, the petitions were sustained on the parents' no contest pleas. Reunification services were again ordered. The children were placed with A.C. and R.C.

Late in June, S.A. enrolled in a drug program and parenting education. In September, her counselor reported that she was "doing ok in the program," but that "her attendance could be better." In October, the program reported that she had missed so many days that she might be discharged, although the counselor later reported that S.A. had transportation problems and was trying to find an in-patient program.

Visits were sporadic in 2007. S.A. began monitored visits in May, but in November, A.C. told DCFS that S.A. only visited once in a while, and at times did not show up for scheduled visits.

2008

Reunification services were terminated for both parents in January 2008. No evidence was taken at that hearing, but the parties stipulated that if called, S.A. would testify that for the past few months she had been attempting to get into an in-patient program, and was currently on a waiting list, and that she had attended three AA meetings, and that D.J. would testify that he had attended three AA meetings and had enrolled in a drug program on January 18, after his release from prison.

DCFS later reported that S.A. enrolled in a program on January 16, 2008, but left during the intake process, after asking that her fee be returned. S.A. told DCFS that she

decided against the program because she would not have been allowed to visit the children for two months.

In April, S.A. filed a section 388 petition, seeking reinstatement of reunification services, attaching proof that she had enrolled in a program, the LACADA program, in February. The court set the petition for hearing, but S.A. withdrew the petition in July. In May 2008, she was arrested for shoplifting.

In July, DCFS reported that S.A. was in the LACADA program. This was apparently a new enrollment, because DCFS also reported that R.C. said that S.A. had visited the children in June, just before she entered the program. R.C. also said that S.A. had visited about 10 times since the first of the year, and might also have seen the children at the home of other relatives. S.A.'s counselor reported that her progress was "fair." The counselor made the same report in September.

The court took evidence at the section 366.26 hearing.

R.C. testified concerning the children's daily life in her home, and testified that she notified S.A. about such things as the children's medical appointments and school events, and that S.A. had attended one such appointment, at Halloween. On cross-examination, she testified during visits, S.A. fed the children and read to them. She believed that S.A. and the children were bonded. R.C. wanted to adopt the children, rather than to be their guardians, because she wanted them to have a stable home. She believed that it would take time before S.A. could provide such a home, and she did not want the children to suffer in the meantime.

R.C. was willing to enter into an agreement which would allow S.A., and the other relatives who were part of the children's lives, to see the children.

As to D.J., R.C. testified that he was incarcerated in June, but before that time, he had visited G. She estimated that he had visited 10 times in the last year and a half. He interacted well with G., who called him "daddy." While he was incarcerated, he sent her drawings, which R.C. put on the wall of the children's bedroom.

S.A. testified that she had been in her program for three months. She was not allowed to visit the children, but she could call twice a month. She also wrote to them

and made them cards and pictures. Before she entered the program, she visited about once a week, at the home of whichever relative was caring for the children. S.A. described the visits much as R.C. had: she read to the children, bathed them, fed them, played with them, and taught them right from wrong. Both children called her "mommy."

R.A. testified similarly about S.A.'s visits with A., when A. was in his care. He believed that the children were bonded to S.A. The parties stipulated that if called, S.A.'s mother would testify similarly, and that if called, D.J. would testify that he visited G. whenever he was out of custody, that he was drug testing during his current incarceration, and that he had completed a parenting class through the L.A. County Jail in June 2008.

The court found that the children were adoptable and that the section 366.26, subdivision, (c)(1)(B)(i) "visits" exception to adoption did not apply, and terminated parental rights.

Discussion

At a section 366.26 hearing, on a finding that it is likely the child will be adopted, the court must terminate parental rights and order the child placed for adoption unless specified circumstances exist. (§ 366.26, subd. (c)(1).) Both parents base their contention on appeal on one of those exceptions, which applies when the parents "have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(B)(i).)

To overcome the preference for adoption and avoid termination of parental rights under this exception, "the parent must show that severing the natural parent-child relationship would deprive the child of a *substantial*, positive emotional attachment such that the child would be *greatly* harmed. [Citations.] A biological parent who has failed to reunify with an adoptable child may not derail an adoption merely by showing the child would derive *some* benefit from continuing a relationship maintained during periods of visitation with the parent. [Citation.] A child who has been adjudged a dependent of the juvenile court should not be deprived of an adoptive parent when the natural parent

has maintained a relationship that may be beneficial to some degree, but that does not meet the child's need for a parent. [Citation.]" (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466-467.)

The burden is on the parent to show that termination of parental rights would be detrimental to the child. (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 805-807.)

On review, we "determine whether there is substantial evidence to support the trial court's ruling by reviewing the evidence most favorably to the prevailing party and indulging in all legitimate and reasonable inferences to uphold the court's ruling. [Citation.] If the court's ruling is supported by substantial evidence, the reviewing court must affirm the court's rejection of the exceptions to termination of parental rights." (*In re S.B.* (2008) 164 Cal.App.4th 289, 297-298.)

We find substantial evidence for the trial court's finding here. It is true that the parents and children had a good relationship, and there was evidence that S.A. and the children were bonded. But, by the time of the section 366.26 hearing, A.'s grandfather or his great-grandparents -- not S.A. -- had been his primary caretaker for most of his life, even in the period before the dependency was initiated. S.A. cared for him for a short period, between December 2006 and April 2007, but for the most part, her contact with him was through visits, and those visits were not consistent throughout the dependency. The same is true of G. S.A. cared for her for several months after her birth, but after April 2007, her great-grandparents were her primary caretakers. S.A.'s visits with the children were good visits, and the children called her "mommy," but they were, nonetheless, visits. We thus cannot say that S.A. carried her burden and that there was no substantial evidence for the trial court finding.

D.J.'s case was even weaker. He visited when he was not incarcerated, but he was often incarcerated. G. enjoyed the visits, and liked him, but we can find nothing in those facts which mean that he occupied a parental role in her life, or that there was no substantial evidence for the court's finding.

Disposition

The orders terminating parental rights are affirmed.

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ARMSTRONG, J.

We concur:

TURNER, P. J.

MOSK, J.